



September 11, 2001

Mr. Mark Anthony Sanchez
Gale. Wilson & Sanchez
115 East Travis, Suite 618
San Antonio, Texas 78205

OR2001-4028

Dear Mr. Sanchez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 151835.

The Atascosa Rural Water Supply Corporation (the "corporation"), which you represent, received a written request for certain audit reports, meeting minutes and notices, and transcripts or tape recordings of the corporation's meetings "from January 1, 2001 to the present." You contend that the requested information is excepted from public disclosure pursuant to section 552.103 of the Government Code.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date." Gov't Code § 552.301(e)(1)(C). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

Although you inform us that the records request was dated June 20, 2001, you have provided no statement or other evidence establishing the date on which the corporation received the current request. Because you have not presented this office with compelling reasons for withholding the information at issue pursuant to section 552.103, we deem this exception to

disclosure as waived. Consequently, the corporation must release the requested information in its entirety, with the following exception.

The fact that information is made confidential by laws outside the Public Information Act constitutes a compelling reason for withholding the information. *See* Open Records Decision No. 150 (1977). You note that the request encompasses the certified agendas or tape recordings of the corporation's executive sessions held under the Open Meetings Act. Section 551.104(c) of the Government Code provides that the certified agenda and tape recording of an executive session is available for public inspection only under a court order requiring such a release. Accordingly, the corporation must withhold the tape recordings at issue absent a court order instructing it to do otherwise. *See also* Open Records Decision No. 495 (1988) (Open Meetings Act removes certified agendas and tapes of executive sessions from review by the attorney general under Public Information Act).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

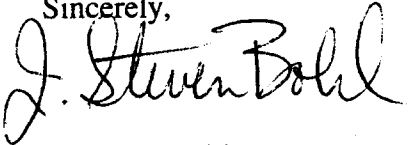
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "J. Steven Bohl". The signature is written in a cursive, flowing style.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 151835

Enc. Submitted documents

c: Mr. Christopher J. McKinney
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(w/o enclosures)